

Award No. 9516

Docket No. CL-8580

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: This is a claim of the System Committee of the Brotherhood that:

a. Carrier violated and continues to violate the Rules of our Agreement by assigning work normally and regularly assigned to the position of Ticket Seller, Sacramento Passenger Station, to an employee outside the scope of the Clerks' Agreement and that:

b. The work normally and regularly assigned to the position of Ticket Seller be returned to the present holder of this position, Mr. E. E. Scott, and that Mr. Scott and all other employees adversely affected by alleged violation of the Clerks' Agreement account denied the right to perform this work on an overtime basis now be compensated for all wage loss sustained from July 27, 1950, on the basis of eight hours per day at the overtime rate, and continuing until the violation is corrected.

EMPLOYEES STATEMENT OF FACTS: The position of Ticket Seller, occupied by Clerk E. E. Scott and working seven days per week, had been in existence at the Sacramento Passenger Station for many years prior to June 19, 1939, at which time a position of Telegrapher Clerk was established under the ORT agreement. Mr. Scott's hours at that time were 8:00 A. M. to 4:00 P. M. without a meal period. In addition to selling tickets he also handled baggage and mail and made out the necessary daily and monthly reports covering the operation of that office. He signed all reports in his capacity as Ticket Seller.

On March 5, 1941, a position of Agent Telegrapher also under the ORT Agreement was established and assigned the hours of 7:00 A. M. to 3:00 P. M., daily. The work of these two positions consisted principally of handling train orders, messages, etc., necessary to the operation of trains. On or about July 28, 1949, this latter position was abolished due to the inauguration of the Centralized Train Control System resulting in the abandonment of train orders being issued from this office.

On March 31, 1949, a second position of Ticket Clerk was established (Employee Exhibit "A") in this office with assigned hours of 3:00 P. M. to 11:00 P. M. as a seven day position.

without any cause to do otherwise. If the General Chairman had been diligent in progressing this claim, a final resolution of the dispute would, no doubt, have been effected by this time. By his dilatory handling of the matter he is attempting to extend the period of the claim by over four years. Carrier states emphatically that this claim should be denied, under the doctrine of laches, account the unreasonable delay in progressing the matter attributable to the Organization and the prejudice to the Carrier resulting therefrom.

In summary Carrier states—

- (1) *the instant claim should be dismissed on the jurisdictional grounds stated above, or*
- (2) *if the Board assumes jurisdiction, the claim should be denied because (a) the Clerks have never established, by written contract or by practice, the exclusive right to the performance of ticket-selling work and (b) of the unconscionable delay in progressing the dispute and resultant prejudice to the Carrier in accordance with the doctrine of laches.*

All of the above has been presented to the Employees.

(Exhibits Not Reproduced)

OPINION OF BOARD: The work that is disputed here primarily involves ticket selling. Unlike the situation involved in Award 5790 (involving the same Carrier and Organization that are involved here), the present case does not turn upon the abolishment of a position. When this case arose in 1950 no clerk position had been abolished, and there is no showing that duties of the subsequently abolished Ticket Clerk position were thereafter performed by Agent-Telegrapher Lawson. Thus, as was true in Award 9476 (also involving these same Parties), Rule 40 (f) is not applicable to the dispute.

The Record herein adequately supports the Carrier's assertion, regarding past practice, that Agent-Telegrapher Lawson and other telegraph service employees had for years performed work of the type involved in this dispute. The Organization in its Ex Parte Submission expressly recognizes, for instance, that "During the period March 5, 1941, to May 1, 1950, the Agent Telegrapher and/or his relief was performing the Ticket Seller's duties from 7:00 A. M. to 8:00 A. M. and from 1:00 P. M. to 2:00 P. M., or two hours daily." The present case is in numerous respects similar to the dispute disposed of by Award 7322, and here, as in that Award, the Carrier's actions did not violate the applicable Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 4th day of August, 1960.